

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES T. LARUE and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Newburgh, NY

*Docket No. 00-2324; Submitted on the Record;
Issued June 19, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he developed an emotional condition due to factors of his federal employment.

On December 22, 1998 appellant, a 44-year-old mailhandler, filed a claim alleging that on April 11, 1997 he developed a post-traumatic stress disorder due to a dispute with a supervisor. By decision dated July 14, 1999, the Office of Workers' Compensation Programs denied appellant's claim alleging that he failed to substantiate a compensable factor of employment. Appellant, through his attorney, requested reconsideration on February 17, 2000. By decision dated May 5, 2000, the Office denied modification of its July 14, 1999 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he developed an emotional condition due to factors of his federal employment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.¹

In this case, appellant attributed his emotional condition to three separate altercations with supervisors. He alleged that in April 1997 he knocked over postcons with his tow motor and that supervisor Stephen Nardo yelled at him, cursed at him and threatened to fire him. Appellant stated that Mr. Nardo grabbed his shirt and he fell backward. Appellant alleged that

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

he reported this incident to his supervisor Connie White who laughed and stated that Mr. Nardo was naughty.

Mr. Nardo submitted two statements disputing appellant's recollection of events. He stated that appellant was towing four postcons with his tow motor, a safety violation. Mr. Nardo instructed appellant to pull only three postcons and appellant became argumentative. He stated that he did not yell or threaten appellant and that he did not touch appellant.

Ms. White stated that appellant did not report the incident to her and that she did not say that Mr. Nardo was naughty.

Appellant did not submit any evidence substantiating that this event occurred as alleged. The record does not contain witness statements or any other evidence in support of appellant's claim. Both of appellant's implicated supervisors, Mr. Nardo and Ms. White, disputed appellant's allegations. As appellant has failed to substantiate that the altercation occurred as alleged he has failed to substantiate this factor of employment.

Appellant also alleged that supervisor Robert Swart accused him of slacking off and lunged at him in July 1986. Mr. Swart responded on July 9, 1999 and stated that he had ordered appellant to perform his assigned tasks after finding him talking on a public telephone and that appellant refused to do so and was sent home. Appellant has also failed to substantiate this altercation as a factor of employment. He did not submit witnesses' statements and provided no other evidence in support of his allegations.

Appellant alleged that in 1995 acting supervisor Felieanio made reference to appellant's sexual orientation. On July 9, 1999 Raymond P. Bioia responded to appellant's allegations and stated that Mr. Felieanio found appellant in the break room and ordered him back to work. Appellant then became loud and abusive and was ordered home. Mr. Bioia stated that he had interviewed witnesses recommended by appellant. He stated that these witnesses did not support appellant's allegations and indicated that appellant became over excited and nasty to Mr. Felieanio. Appellant has not established that he was assaulted or harassed by Mr. Felieanio.

The Board further notes that appellant has submitted no evidence that the employing establishment committed error or abuse in the disciplinary actions taken against appellant as a result of these altercations. As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Federal Employees' Compensation Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.² There is no evidence that the employing establishment acted unreasonably in informing appellant of the consequences of violating safety regulations, in sending him home for refusing to follow instructions.

² *Martha L. Watson*, 46 ECAB 407 (1995).

Appellant also noted that following his diagnosis of post-traumatic stress disorder, his physician recommended that appellant work the daytime shift. He stated that he had requested to work nights after his house burned down in order to increase his pay and help with the family finances. Appellant alleged that Ms. White denied his request for day work. The employing establishment responded and noted that appellant bid for night duty on January 19, 1997 and again on March 15, 1997. A change in duty shift can constitute a compensable factor of employment. However, the Board has held that the employing establishment must effectuate a change in duty shift in such a manner to implicate a compensable employment factor. In this case, the change in duty shift was at appellant's request. There is no evidence that this change was unreasonable on the part of the employing establishment.

As appellant has failed to substantiate a compensable factor of employment, it is not necessary for the Board to review the medical evidence of record.³

The May 5, 2000 and July 14, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 19, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

³ See *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).